

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.208 of 2001

M.A.No.168/2001

New Delhi, this the 17th day of August, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

6

1. Gian Chand
S/o late Duni Chand Jhamb
R/o 125/19, Faridabad,
(Haryana)
2. Shri Daljeet Singh
S/o Shri Gurbachan Singh
R/o L-57/A, Malviya Nagar
New Delhi-17
3. Shri S.C. Malhotra
s/o late Shri K.L. Malhotra
r/o 28/T-III, PMT Staff Colony,
B.T.P.S., Badarpur
New Delhi-44
4. Shri Sultan Singh
s/o late Shri Dhian Singh
r/o 67/T-III PMT Staff Colony
B.T.P.S., Badarpur,
New Delhi-44
5. Km. S. Chatterjee
D/o late Shri K.N. Chatterjee,
r/o Flat No. 63, Pkt. D-6, Sector-IV
Rohini, Delhi-85

-APPLICANTS

(By Advocate: Shri J.C. Malik)

Versus

1. Union of India
Through Secretary
Central Water Commission
Ministry of Water Resources
Govt. of India, Sewa Bhawan,
R.K. Puram, New Delhi
2. Union of India
through Secretary
Deptt. of Power, C.E.A.
Sewa Bhawan, R.K. Puram
New Delhi

- RESPONDENTS

(By Advocate: Shri D.S. Mahendru)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Judl)

This is a joint OA filed by five applicants seeking following reliefs:

- "a) Pension for the period served under
Central Water and Power Commission,

R

alongwith the interest from the date of accrual;

- b) Encashment of the leave to their credit as per the existing Rules on the subject, alongwith interest from the date of accrual;
- c) Balance of the Gratuity if any left over in case of the applicants, alongwith the interest on the paid and unpaid portion of the Gratuity.

2. Facts in brief are that applicants had been earlier working in Central Water and Power Commission (in short 'CWPC'), Sewa Bhawan, R.K.Puram. They worked under CWPC for the period shown against each:

<u>Name of Individual</u>	<u>Post Held</u>	<u>Date of Joining</u>	<u>Date of Leaving</u>
1. Sh. Gian Chand	U.D. Clerk	16.12.1968	31.12.1978
2. Sh. Daljeet Singh	L.D. Clerk	16.12.1968	31.12.1978
3. Sh. S.C. Malhotra	U.D. Clerk	01.06.1968	31.12.1978
4. Sh. Sultan Singh	L.D. Clerk	18.02.1968	31.12.1978
5. Km. S. Chatterjee	Receptionist	11.12.1968	30.03.1984

3. Thereafter, all the applicants had been placed in a Public Sector Undertaking i.e. N.T.P.C. where they were permanently absorbed. However, applicants at the time of retirement, had not been given the retiral benefits for the period for which they had worked with the Union of India i.e. CWPC. They had made representation also but that did not bring any results. Being aggrieved, they filed an OA No.1624/99 before the Tribunal. In compliance with the directions given in that OA, applicants 1 to 4 received their gratuity but without any interest. But as far the case of applicant no.5 is concerned, she has not been paid anything by her previous employer. It is also stated that in a similar case before this Tribunal in OA No.2362/97, the applicants were granted pension, gratuity and encashment of leave. Similarly, one Shri Pradumna

8

Kumar Jain had also been allowed the pensionary benefits as per the directions of the Hon'ble Supreme Court in a case titled Pradumna Kumar Jain vs. Union of India & anr., 1994 Supp. (2) SCC 548 and the benefit of Rule 37 read with Rule 49 (2) (h) of CCS Pension Rules had been given to him. It is, therefore, prayed that the applicants are entitled for pension, gratuity and encashment of leave for the period during which they have worked under Govt. of India.

4. Respondent no.1 is contesting the OA. They have taken the plea that since all the applicants were quasi-permanent at the time of their absorption in NTPC, so their retirement benefits cannot be regulated under CCS (Pension) Rules, 1972 and that they are entitled only for the terminal benefits as per provisions of Rule 11 of the CCS (Temporary) Service Rules. As regards the terminal gratuity is concerned, it is stated that the same has been paid to the applicants 1 to 4 and as regards the payment of terminal gratuity to applicant no.5, a separate reply will be filed by Central Electricity Authority, under which she had been working. It is also pleaded that since the provisions of CCS (Pension) Rules are applicable only to the permanent employees, so the applicants are not covered.

5. Rejoinder has also been filed by the applicants. They have submitted in their rejoinder that they were direct recruits and were appointed for an indefinite period. It is submitted that since they had earned increments, crossed efficiency bar, attained quasi-permanent status and were also promoted as UDC, it could not be said that they were not holding their posts in CWPC in substantive capacity. It is further submitted that the decision of the Hon'ble Supreme Court in the case of Pradumna Kumar Jain (supra) fully covers the case of the applicants.

h

9

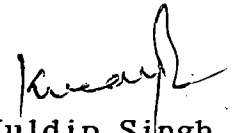
6. I have heard learned counsel for the parties and gone through the records.

7. From the perusal of pleas taken by respondents, I find that the only objection taken by respondents is that the applicants had not been given permanent status and were only quasi-permanent employees, so Rule 37 of CCS (Pension) Rules was not applicable to the applicants and they were not entitled to pro-rata pension but only to terminal gratuity. In my opinion, this plea of the respondents has no merits because this court has already negatived the plea taken by the respondents in OA No.2362/97 titled Smt.Aruna Mehta & ors. vs. UOI. In the said case, the Tribunal had also considered the case of Pradumna Kumar Jain wherein it was laid down by the Hon'ble Supreme Court that a person appointed against permanent vacancy who had crossed E.B. and was even promoted to a higher rank, could not be considered to be working in an officiating capacity. The Hon'ble Supreme Court in another case titled Baleshwar Dass & ors. vs. State of Uttar Pradesh & ors., 1981 (1) SCR 449, has held that "a person is said to hold a post in a substantive capacity when he holds it for an indefinite period especially of long duration in contradistinction to a person who holds it for a definite or a temporary period." Relying upon these judgements, the Tribunal in OA No.2362/97 had allowed the claim of the applicants and had directed the respondents to calculate the pension and all other retiral benefits and to pay the same to the applicants from the date it became due till the actual date of payment.

h

10
OA

8. Considering the judgement of the Tribunal in No.2362/97, I find no reasons to differ with the same and that the applicants are fully covered by this judgement and are entitled to the benefits as extended to the applicants in that OA. Accordingly, I allow this OA with a direction to respondents to calculate the pro-rata retiral benefits and pay the same to the applicants with 12% interest from the date it became due, within a period of three months from the date of receipt of a copy of this order. No costs.


(Kuldip Singh)
Member (Judl.)

/dinesh/